

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH  
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Commercial Complex(BDA),  
Indiranagar,  
Bangalore - 560 038

Dated : 14/8/87.

APPLICATION NO 1924 /86(F)

W.P. NO \_\_\_\_\_

Applicant

Shri J. Martin

V/s The Secy, M/o Finance & 3 Ors

To

1. Shri J. Martin  
Driver  
Office of the Additional Collector  
of Customs  
P.V.S. Sadan, Shedigudda  
Mangalore - 575 003
2. Shri Ranganatha S. Jois  
Advocate  
36, 'Vagdevi'  
Shankarapuram  
Bangalore - 560 004
3. The Secretary  
Ministry of Finance (Dept of Revenue) New Delhi  
Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH
4. The Collector of Central Excise  
& Customs  
Central Revenue Blds, Queens' Road  
Bangalore - 560 001
5. The Additional Collector of Customs  
P.V.S. Sadan, Shedigudda  
Mangalore - 575 003
6. The Deputy Collector of Customs  
Central Revenue Blds, Queens' Road  
Bangalore - 560 001
7. Shri M. Vasudeva Rao  
Central Govt. Stng Counsel  
High Court Blds, B'lore - 1

Please find enclosed herewith the copy of ORDER/~~STAX~~/  
~~INTERIM ORDER~~ passed by this Tribunal in the above said  
application on 30-7-87.

Encl : as above

*B.V. Venkatesh Reddy*  
DEPUTY REGISTRAR  
~~SECTION OFFICER~~  
(JUDICIAL)

*dc*

RECEIVED 11/8/87  
Diary No. 1002/68/87  
Date: 17-8-87

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

DATED THIS THE 30th DAY OF JULY, 1987

Present : Hon'ble Sri Ch. Ramakrishna Rao

Member (J)

Hon'ble Sri P. Srinivasan

Member (A)

APPLICATION No. 1924/86

J. Martin,  
Driver in the Office of  
the Additional Collector Customs,  
Mangalore.

...

Applicant

( Sri Ranganath Jois

... Advocate )

vs.

1. The Union of India,  
by its Secretary,  
Ministry of Finance,  
Vitha Bhavan,  
New Delhi.

2. The Collector of Central Excise,  
and Customs, Queen's Road,  
Bangalore.

3. The Additional Collector of  
Customs, PVS Sadan,  
Sheddiguda,  
Mangalore - 575 003.

4. The Deputy Collector of Customs,  
Bangalore.

...

Respondents

( Sri M. J. Rao

... Advocate )

This application has come up before the Tribunal  
today. Hon'ble Sri Ch. Ramakrishna Rao, Member (J) made the  
following :

ORDER

This is an application filed under section 19 of the  
Administrative Tribunals Act, 1985.

2. A memorandum dated 18.2.1983 was issued to the appli-  
cant by the Assistant Collector of Central Excise & Customs,  
Bangalore, levelling two charges against him :



(i) that he, while working in Headquarters, Bangalore, had tampered on 19.9.1982 with the seized vehicle CAE 4252, parked in the office premises for personal gain.

(ii) that he, while working in Headquarters office, Bangalore, had caused accident to a department vehicle CAE 1595 on 26.8.82 by his rash and negligent driving.

The applicant denied the charges. Disciplinary proceedings were therefore, initiated against him. The Inquiry Officer ('IO') found that the first charge levelled against the applicant was established but not the second. The disciplinary authority (DA) impleaded as the fourth Respondant (R4), viz. Deputy Controller of Central Excise & Customs, accepted the findings of the IO and imposed the penalty of reduction by four stages in the time scale for a period of four years and two months w.e.r. 1.3.35; withholding of increments of pay during the period of reduction and postponing of his future increments on expiry of the aforesaid period. The applicant preferred an appeal against the order of R4 to the Collector of Customs & Central Excise, Bangalore (R2) who, while confirming the findings of the DA (R4), reduced the penalty to the extent that the postponement of future increments of pay of the applicant after the expiry of the period of penalty would not take effect. Against this order the applicant preferred a memorial to the President of India, which was rejected by letter dated 7.1.1986. Aggrieved by these orders, the applicant has filed this application.

3. Sri Ranganath Jois, learned counsel for the applicant, strenuously contends that there are material irregularities in the conduct of the inquiry proceedings. He developed his argument thus: The statement of the applicant, on which reliance was placed by the IO, was obtained by the Control Room Officer (CRO) under duress and it should have been eschewed from consideration by R4 and R2. He was not given the assistance of a legal practitioner for presenting his case. The IO had relied in his report



on the oral testimony of Sri S.K.Keshavan, say, who was inimically disposed to him for having refused to teach driving. The witnesses called for by him and the documents, on which he placed reliance for refuting the charge levelled against him, were not made available at the inquiry. The penalty imposed on him is therefore unsustainable.

4. Sri M.V.Rao, learned counsel for the respondents, refuted the contentions put forward on behalf of the applicant as follows : The request of the applicant for engaging a legal practitioner was not justified since the Presenting Officer was not a legal practitioner. He was, however, given the facility of presenting his case through a Defence Assistant and he was not, therefore, handicapped in defending himself before the IO. All the documents relevant for the charges against the applicant were produced during the inquiry. The plea that Sri Keshavan was inimically disposed towards the applicant has not been substantiated by the applicant. The Statement given by the applicant before the CRO was in the presents of three witnesses on the date of the occurrence and the plea that it was obtained under coercion is, therefore, untenable.

5. We have considered the rival contentions carefully and also perused the records produced on behalf of the respondents by Sri M.V.Rao. There is no substance in the argument of Sri Jeis that the witnesses his client wanted to examine were not summoned by the IO because it is borne out by the record that he actually did not furnish the names of the persons whom he wanted to be summoned. The applicant was also afforded an opportunity to inspect all the documents relevant for the charge levelled against him. So far as the complaint of animus against Sri Keshavan is concerned, the mere ipsi dixit of the applicant without any evidence—oral or circumstantial — cannot be entertained. That the applicant refused to teach driving to Sri Keshavan appears to us to be a circumstance much too



tenuous to sustain the plea of animus, which we accordingly reject.

6. Turning to the grievance of the applicant that he was denied assistance of a legal practitioner to present his case before the IO, we note that the Presenting Officer on behalf of the department was only an Inspector of Central Excise and not a person trained in law. In fact, the complaint of the applicant before the IO was that none was forthcoming from the department to appear on his behalf and, therefore, he may be permitted to engage a legal practitioner.

7. Reliance is placed by Sri Jeis on the decision of the Supreme Court C.L. Subramaniam vs Collector of Customs A.I.R. 1971 S.C. 2173 in support of his contention that his client should have been given an opportunity to defend himself through a legal practitioner. A major penalty was imposed on the petitioner in the case before the SC viz. removal from service after holding an inquiry in which a trained prosecutor was appointed as the presenting officer on behalf of the Government but the Government servant was not allowed to engage a legal practitioner or another Government servant as the Defence Assistant. The SC held that the order removing the petitioner from service was not valid in as much as no reasonable opportunity was given to him to defend himself. The SC clearly observed in the decision cited supra -

"In enquiries by management into misconduct of a workman fairly simple questions of fact as to whether certain acts of misconduct were committed by a workman or not fall to be considered and the workman is best suited to conduct the case. Ordinarily in enquiries before domestic tribunals, a person accused of any misconduct conducts his own case and so it cannot be said that in any enquiry against a workman natural justice demand that he should be represented by a representative of his Union.



Thus, the principles of natural justice cannot be considered in the present context as these principles are only relevant when the concerned procedure is not regulated by any statutory rule." Since the facility of appearance through a Defence Assistant was provided in the present case, we are satisfied that the applicant was not in any way handicapped in defending himself and the decision relied on by him has no application.

8. We now proceed to consider whether the penalty imposed on the applicant is disproportionate to the gravity of the charge levelled against him. The appellate authority himself, having considered that the penalty imposed by the DA was harsh, mitigated the rigour of the same by modifying it in a manner, which appears to be just and equitable. We are satisfied that the facts and circumstances of the case do not call for further reduction of the penalty.

9. In the result the application is dismissed. Parties to bear their own costs.



Sd/-

MEMBER (J)

Sd/-

MEMBER (A)

- True copy -

*R. V. Venkatesh*  
DEPUTY REGISTRAR  
CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH  
BANGALORE